IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

Crl.MC.No. 3191 of 2007()

[C.C.NO.502/2001 OF J.F.C.M COURT, NEDUMKANDAM]

PETITIONER/ACCUSED:

P.V.SHAJAHAN, AGED 28 YEARS,
S/O.YOOSAF,
BLOCK NO.127, THOOKKUPALAM KARA,
PARATHODU VILLAGE,
UDUMBANCHOLA TALUK.

BY ADV. SRI.S.DILEEP (KALLAR)

RESPONDENTS/COMPLAINANT:

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1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. K.JOY, S/O.SCARIA,
KUNNUVILA VEEDU, COMBAYAR KARA,
PARADHODU VILLAGE,
UDUMBANCHOLA TALUK.

BY ADV. SRI.NAVEEN THOMAS
PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 17/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3191 of 2007

Dated this the 17th day of October 2007

O R D E R

The petitioner faces indictment in a prosecution for the offence punishable under Section 138 of the Negotiable Instruments Act. He faces a sentence of imprisonment till rising of court. There is a further direction that the petitioner shall "pay a sum of Rs.1,60,000/- as compensation". This direction appears in the last sentence of paragraph 6 of the order.

2. However, in the operative portion, the direction is expressed in a different language. There is a direction to deposit an amount of Rs.1,60,000/- by 12/8/2005. Such deposited amount is directed to be released to the complainant.

3. According to the petitioner, without being conscious of the subsequent direction, the entire amount of Rs.1,60,000/- had already been paid to the complainant. The complainant is represented by a counsel. He also confirms that the amount has been paid directly to the complainant.

4. The prayer of the petitioner is that invoking the dictum in Sabu George v. Home Secretary [2007(1) KLT 982] composition may be accepted. Alternatively, after discussions at the Bar, the learned counsel for the petitioner prays that the payment made to the complainant and acknowledgment by him may be reckoned as sufficient compliance with the direction to pay compensation. The default sentence may not be executed. Appropriate directions may be issued in that regard to the learned Magistrate.

5. I am not satisfied that the dictum in Sabu George v. Home Secretary [2007(1) KLT 982] deserves to be invoked. Sabu George v. Home Secretary [2007(1) KLT 982] is not authority for the proposition that any and every post revision composition can and ought to be accepted. On the facts of that case, as the accused faced the prospect of going to prison to serve a long sentence of imprisonment notwithstanding the composition of the offence by the complainant, powers under Section 482 Cr.P.C were invoked to accept the composition. In the instant case, the only sentence imposed is sentence of imprisonment till rising of court. Of course, there is a direction to pay compensation and to undergo sentence in default. The

compensation amount has been paid in full, as submitted by the learned counsel for both sides. In these circumstances, I am of the opinion that there is absolutely no justification for the prayer to invoke the dictum in Sabu George v. Home Secretary [2007(1) KLT 982]. That prayer must fail.

6. Coming to the later prayer, I take note of the fact that there was some justifiable wrong understanding of the specific direction in paragraph 6 and the operative portion of the order. In these circumstances, I am satisfied that invoking powers under Section 482 Cr.P.C it can be clarified that if the petitioner/accused and the respondent/complainant do both appear before the learned Magistrate and satisfy the learned Magistrate that the entire compensation amount has been paid by the petitioner to the complainant, the learned Magistrate should not proceed to execute the default sentence.

7. Direction is issued accordingly. This petition is allowed in part. The petitioner and the complainant must appear before the learned Magistrate and report that the liability for payment of compensation has been paid and discharged.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007